

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FTI, P.D.
JAN 27
2011
S.D. S.D.

MICHAEL RYAN LARSON, * CIV 10-1026

Petitioner, * ORDER DENYING PETITION

-vs-

DOUGLAS WEBER, Warden, *
South Dakota State Penitentiary, and *
MARTY JACKLEY, Attorney General, *

Respondents. *

*

Petitioner, a prisoner at the South Dakota State Penitentiary, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. I issued an order to show cause why the petition should not be dismissed for failure to file within the one year period of limitations set forth in 28 U.S.C. § 2244(d)(1). Petitioner responded that his period of limitations should be calculated from February 9, 2010, the date upon which the South Dakota Supreme Court issued an amended order denying his application for a certificate of probable cause.

As set forth in the order to show cause, petitioner's conviction was affirmed on direct appeal on September 5, 2006. The time for filing a petition for a writ of certiorari in the United States Supreme Court challenging the conviction on direct review expired December 4, 2006. He did not file his state court habeas petition until August 21, 2008, more than 20 months later. Thus, petitioner's one year period of limitations expired eight months prior to the filing of his state court petition challenging his conviction and sentence of imprisonment. *See Painter v. Iowa*, 247 F.3d 1255, 1256 (8th Cir. 2001) ("the time between the date that direct review of a conviction is completed and the date that an application for state post-conviction relief is filed counts against the one-year period"). *Accord Boston v. Weber*, 525 F.3d 622, 625-26 (8th Cir. 2008). The petition must be dismissed as untimely.

Now, therefore,

IT IS ORDERED that the petition for a writ of habeas corpus is denied as untimely.

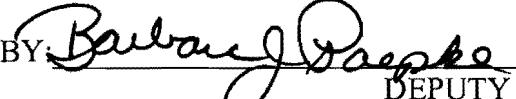
Dated this 26th day of January, 2011.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, Clerk

BY: 
DEPUTY
(SEAL)